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TAGS: [PREL](#) [PGOV](#) [PTER](#) [KCRM](#) [LE](#) [SY](#)
SUBJECT: MGLE01: UN LEGAL AFFAIRS CHIEF BRIEFS P-3 ON UNSCR
1644 FOLLOW-UP

Classified By: Jeffrey Feltman, Ambassador, per 1.4 (b) and (d).

SUMMARY

¶1. (S) In a 1/28 meeting, UN Under Secretary General for Legal Affairs Nicolas Michel briefed P-3 ambassadors on his consultations with GOL authorities on follow-up to UNSCR 1644. Michel said that he was pleasantly surprised and relieved by the broad base of support he found for an international tribunal. The details of where such a tribunal would sit, who would preside, what legal jurisdiction would be followed, etc. all need to be pursued, but the Lebanese were generally well prepared and "asked the right questions."

Next, Michel said, he hoped the Lebanese would send a small team to New York for consultations, after which a UN team would return to Beirut. His goal was for UNSYG Annan to report initially to the UNSC by March 15. UK Ambassador James Watt revealed that the British have offered the Lebanese use of a Cyprus airbase for Hariri-related trials. Watt cautioned that this offer has not yet been shared with the Cypriots and thus should be carefully protected. Disagreeing on one point with Michel, P-3 ambassadors questioned Michel's preference for GOL action to set up an international tribunal rather than reliance on a UNSC decision. UNIIIC Commissioner Brammertz, who attended the P-3 briefing and talked with Ambassador Feltman on the margins, said that he hoped international tribunal questions could be answered quickly, as the UNIIIC should prepare its own work according to the anticipated trials. Brammertz, expressing concern that the UNIIIC must prepare a case that would meet international standards, suggested that he will work on establishing legal and analytical systems to replace a rather ad hoc nature of the UNIIIC operation thus far. Brammertz also noted that he has already established a liaison unit within the UNIIIC to fulfill another part of UNSCR 1644 regarding assistance to the Lebanese in investigating the other terrorist attacks. End summary.

IN WIDE-RANGING CONSULTATIONS, MICHEL
IMPRESSED BY SENSE OF URGENCY, APPRECIATION

¶2. (C) In the evening of 1/28, Michel, joined by his team from the UN's Office of Legal Affairs (UN/OLA) and Geir Pedersen, briefed the P-3 Ambassadors and UNIIIC Commissioner Brammertz on his just-concluded 1/27-1/28 consultations with the Lebanese authorities on UNSCR 1644 follow-up. Michel noted that he had met with President Emile Lahoud, Parliament Speaker Berri, Prime Minister Siniora, Minister of Foreign Affairs Salloukh, Hariri bloc legal advisor (and "shadow" Justice Minister) Bahej Tabarah, and UN staff. Minister of

Justice Charles Rizk hosted a long working lunch for the UN/OLA team that included Prosecutor-General Said Mirza, Higher Judicial Council chief Antoine Kheir, Presiding Judge for the Hariri assassination Elias Eid, and judicial liaison to the UNIIIC Judge Ralf Riachi. Everyone he met, Michel reported, emphasized how much the Lebanese appreciate the UN's help. All his Lebanese interlocutors stressed the need to move quickly, to get the Hariri assassination behind them as fast as possible. Both the appreciation and the sense of urgency impressed Michel, he said.

"RELIEVED" TO DISCOVER BROADER
THAN EXPECTED LEVELS OF SUPPORT

13. (C) Starting out with general impressions, Michel said that he was also pleasantly surprised, "even relieved," at the broad base of support for an international tribunal to try any suspects in the Hariri assassination. He was aware of sharp political divisions within Lebanon on many issues, but, on this question, even Shia representatives Berri and Salloukh expressed their strong support for an international tribunal. People may differ on the details, but Michel was pleased to discover more common ground than he had expected, even in the current difficult political circumstances in Lebanon. He reported that the Lebanese had done their homework before he arrived and thus were prepared with good questions and comments. In general, he said, the consultative process between the UN and the GOL must be seen as an educational process, but the Lebanese were ready to learn. Asked what he meant by this educational process, Michel explained that Bahaj Tabbarah had spent much time questioning Michel about what elements make a tribunal considered to be "international." Michel said that he explained to Tabbarah that the Lebanese need to think of what

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they need for fair, independent, and transparent judicial procedures. There is no single model of when a tribunal becomes international, and the Lebanese need to define what works best for Lebanon. The Lebanese, Michel said, need to think creatively.

QUESTIONS POSED TO GOL OFFICIALS
REGARDING INTERNATIONAL TRIBUNAL

14. (C) Emphasizing that he was mostly in a "learning and listening" mode during his trip, Michel said that most of his discussions centered on the question in UNSCR 1644 of a tribunal, with only some comments on the part of UNSCR 1644 asking the UNSYG to consult with the GOL on providing assistance in the investigation of the other terrorist attacks. It was clear to him, Michel said, that no existing model -- Lockerbie, Cambodia, Sierra Leone, etc. -- is tailor-made for the Lebanese situation. In terms of substance, Michel noted that he discussed the following issues with his interlocutors regarding a tribunal:

-- Choice of law: Will Lebanese law be applied? Everyone he met, he said, was interested in ensuring that "the main points" of Lebanese law will be applied, but there are details to consider. For example, some of the Lebanese advocated using a prosecutor system rather than the Lebanese process (based on the French) of having a juge d'instructions (presiding judge), because the prosecutor system is perceived to be a speedier process and could more readily pick up on the work by the UNIIIC. Michel said that his perception that the Lebanese would try to adhere as closely to all details of Lebanese law and a Lebanese process were proven wrong during his meetings.

-- Penalties: Even though Lebanon has a death penalty, all Lebanese accepted that a UN-affiliated tribunal could only have a maximum sentence of life imprisonment. Some interlocutors even welcomed this condition, Michel said, and

thought it would be useful in securing cooperation from key figures.

-- Legal instrument that creates the UNIIIC: Michel said that, once the details of the tribunal are worked out, there are three options for legal establishment of the court. First, the Lebanese Parliament could pass a statute that creates the tribunal. Second, the UN and GOL could sign an agreement together. Third, the UNSC could pass a resolution creating the tribunal. The first and second options, Michel said, are legally distinct but contain some of the same elements. If the Lebanese Parliament would pass a statute, the UN would still need some kind of understanding with the GOL. If the GOL entered into an agreement, per the second option, with the UN, the GOL would probably still need some kind of Parliamentary ratification.

-- Question of jurisdiction: In some international tribunals, Michel noted, decisions have to be made about whether to pursue charges of genocide, crimes against humanity or war crimes. None of that applies to the Hariri assassination, making the jurisdiction questions simpler. But there still need to be decisions on whether the tribunal will try only suspects related to the Hariri assassination or will include other crimes as well. There is also a question about whether the tribunal would try only the most senior suspects or everyone involved. How this question is answered has consequences for resources and time frame for the tribunal, Michel reported. He said that, in general, the Lebanese seem to want all suspects tried, no matter how minor their roles may have been.

-- Organized structure: Will the tribunal mirror the Lebanese system? Will there be both a trial chamber and an appeal chamber? What will the ratio of Lebanese judges to international figures be in each chamber? Michel said that he advised the Lebanese not to consider the Cambodia model, which he said had two parallel figures -- an international figure and a Cambodian figure -- for each position. Michel said that he considered the Cambodia model to be a "recipe for duplication, delay, and gridlock." Michel said that his Lebanese interlocutors were all over the map on this question, although everyone agreed that the person in the prosecuting role must be non-Lebanese.

-- Location: The majority of his Lebanese interlocutors advocated that the tribunal must take place outside Lebanon, Michel noted. But Speaker Berri and FM Salloukh "were not

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convinced," reflecting Shia concerns. Some discussed Cyprus, while others advocated a location where the UN already had a facility. Some even mentioned Egypt, Michel said.

-- Financing: Michel said that he briefed the Lebanese on how financing has been done in other examples. Ad hoc tribunals tend to have UNSC-assessed contributions, he said, whereas others operate with voluntary contributions. Michel said that he strongly opposes the voluntary approach, as "you can't have the Secretariat looking around to ask for money." He noted that many people said that Lebanon could make a substantial contribution. While some Lebanese mused that the Hariri family could pay for some if not all of the tribunal, Michel commented "that is obviously a bad idea."

-- Interim measures: People now in jail were arrested under Lebanese law, Michel said. If decisions are taken about using a different set of laws for the actual tribunal, there will need to be some kind of interim steps, perhaps GOL decrees, to provide legal transition for witnesses, suspects, and even evidence collected so far.

-- UNIIIC transition: The UNIIIC will face expiry or another renewal on 6/15. This reality injects a sense of urgency in the international tribunal question, Michel noted. If the UNIIIC will be extended again, perhaps some

adjustments in its mandate and role should be made, so that the UNIIIC shifts in accord with what is decided regarding the trial options.

-- Witness protection program: One needs to be established, Michel emphasized.

EXPANSION OF UNIIIC MANDATE
TO COVER OTHER ATTACKS

15. (C) While emphasizing again that this topic was of secondary attention in his meetings, Michel said that he also solicited people's views on whether the UNIIIC mandate should be extended to investigate other terrorist attacks since the 10/1/04 car bomb attack against Marwan Hamadeh. Michel said that he emphasized that UNSCR 1644 already authorized the UNIIIC to provide assistance at the request of the GOL, "and I urged everyone to make full use of these facilities." Brammertz interrupted to say that he has already set up a special liaison unit within the UNIIIC to provide such technical assistance and advice to Lebanese investigations. By keeping this unit isolated from the daily tasks of the Hariri assassination, Brammertz thought that he could provide services to the GOL without distracting attention away from the UNIIIC's central mission of the Hariri investigation. Nodding, Michel said that he strongly believed that it was premature to ask for formal expansion of the UNIIIC mandate to cover the other crimes. Progress on the Hariri assassination and movement toward a trial might provide some guidance over whether such expansion is really needed, he said.

NEXT STEPS: GOL TO SEND
TEAM TO UN HEADQUARTERS

16. (C) In terms of next steps, Michel said that he hoped the GOL would nominate a small team ("one or two persons") to come to UN headquarters to talk in more detail about the issues raised during these initial consultations. Smiling, Michel said that he was aware that the nominations for such a team would cause controversy inside Lebanon, as there is likely to be competition over who gets to appoint the members. Minister of Justice Charles Rizk (allied with President Lahoud) was very eager to make the nominations immediately, but PM Siniora might have other ideas. Next, UN/OLA will send a team back to Lebanon for a longer period, during which time the team will also meet with a broad range of civil society in order to educate people about the meaning of an international tribunal.

17. (C) Regarding timing, Michel quoted that UNSCR 1644 requires UNSYG to report back "on a timely basis" on the question of an international tribunal. In Michel's view, it would make sense for UNSYG Annan to provide an initial report to the Security Council before or by March 15, when the UNIIIC issues its next report. And then it would make sense to have a more definitive report on UNSCR 1644 follow-up by the time the UNIIIC mandate is again debated, in June.

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P-3 AMBASSADORS QUESTION
GOL ABILITY TO MAKE DECISIONS

18. (C) Asked by the Ambassadors what points seemed most contentious to the Lebanese, Michel said that he sensed disagreements over the location and over the amount of Lebanese composition in judicial teams. But neither of these seemed to be deal breakers, he said. On the other hand, there seemed to be a huge disagreement over the legal instruments to be used to create the tribunal. Speaker Berri said that another UNSCR would be red line that would destroy the Lebanese consensus for an international tribunal. While

noting that his rationale was different than Berri's, Michel said that he, too, did not like the idea of UNSC action. Instead, he favored some kind of GOL action, either a parliamentary statute or GOL agreement with the UN ratified by the parliament. That would create Lebanese "ownership," and contribute to capacity building within Lebanon. Berri, Michel said, had boasted that he could get all parliamentary action completed in less than two months, a considerable improvement over the eighteen months it took Sierra Leone's legislature to act.

¶9. (S) The P-3 ambassadors cautioned Michel that Berri could not be trusted in accelerating a legislative calendar for controversial bills. The P-3 ambassadors expressed considerable skepticism that Michel's preference for parliamentary action was realistic. French Ambassador Emie, endorsed by his P-3 colleagues, flatly rejected the notion that the Lebanese will be able to pass a law creating the tribunal. Citing many examples when the Lebanese confessional structures led to gridlock, the ambassadors urged that Michel start thinking now about UNSC action instead. Michel said that, unless there was UNSC unanimity in passing a resolution, the tribunal would be of questionable legitimacy. How, he asked, do you get the Russians and Chinese to vote in favor of a resolution creating a tribunal, if there is no consensus inside Lebanon? The ambassadors again noted that, whatever the difficulties in New York, forcing the Lebanese to act risks destabilizing the country. "The Syrians have clearly decided to destabilize Lebanon," Emie insisted. "They are using assassinations, and they are using Hizballah. They will use any proposal that the parliament create the tribunal to make things worse." Moreover, the ambassadors noted, a UNSC-created tribunal might have better luck getting Syrian cooperation than anything that came into being because of a Lebanese parliamentary act.

MUSING ABOUT AN ICC OPTION

¶10. (S) Saying that he knew very well what the U.S. reaction would be, Michel said that there was another option, perhaps the simplest option, were it not for probable political objections. The Treaty of Rome creating the International Criminal Court could be amended, adding crimes related to terrorism as another part of the ICC jurisdiction. Emie noted that the outgoing UNIIIC Commissioner Mehlis had mused about the same approach. Ambassador Feltman emphasized that the USG would not support moving in this direction.

WATT SAYS UK OFFERS UP CYPRUS (BUT WITHOUT INFORMING CYPRIOTS)

¶11. (S) Referring to the question of the location of the trial, UK Ambassador James Watt revealed that, during Jack Straw's visit to Lebanon in early January, Straw had offered the Lebanese the use of UK airbases in Cyprus as a location for an international tribunal. Flights from Lebanon or Syria could go, for security reasons, directly to the airbase rather than via Larnaca Airport. Watt cautioned that the UK has not yet discussed this option with the Cypriots themselves, so he asked that the information be closely held. Michel noted that several Lebanese had made reference to Straw's offer and appeared to be interested in pursuing it.

BRAMMERTZ SEEKS CLARITY, ORDER, SYSTEMS

¶12. (C) On the margins of the P-3 briefing, newly arrived UNIIIC Commissioner Brammertz and Ambassador Feltman spoke briefly and agreed to meet in the coming days (time TBD). Brammertz said that he is eager for some of the questions

regarding the international tribunal to be answered, as the UNIIIC needs to adjust how it collects and dispenses with evidence in accordance to the laws and procedures to be applied in any trials. For example, Brammertz said, the assumption in UNSCR 1595 and subsequent resolutions has been that the UNIIIC is, essentially, helping the GOL prepare for an eventual Lebanese trial. Thus, Brammertz said, his predecessor, Detlev Mehlis, had periodically turned over all evidence to the Lebanese presiding judge. If an international tribunal will be trying the case instead, perhaps the UNIIIC should have different procedures for preserving the evidence.

¶13. (C) Asked about his own approach, Brammertz generously praised the work of Mehlis, saying that he would build on Mehlis' own analysis and work. But, Brammertz said, the environment has changed, and the UNIIIC needs to adjust. When Mehlis arrived, he thought the UNIIIC would be around for only three months and be required merely to submit a report to the UNSC. He then got a six-week extension, followed by another ten-week extension, followed by an agreement to stay on a few additional weeks awaiting Brammertz' appointment and arrival. All of this meant that the UNIIIC remained a rather ad hoc institution, Brammertz said. Now, besides continuing to pursue leads, the UNIIIC need to increase its own legal and technical capacities. Brammertz reported that he was setting up new units within the UNIIIC to deal exclusively with preparing files to make them up to international standards. Asked by the Ambassador about competing priorities, he insisted that this "standardization" would not come at the expense of the actual investigation but was absolutely critical to the UNIIIC's ability to understand and present what it had. There were some technical leads, too, that Mehlis never pursued because he lacked the technical expertise. Now is the time to build up the in-house technical expertise. Brammertz also said that the UNIIIC was having to do more of the trial preparatory work than had originally been envisioned, since the GOL has proven politically incapable of taking this on. This, again, suggested that the UNIIIC had to move into a more institutionalized phase.

COMMENT

¶14. (C) Before the arrival of the UN/OLA team, rumors circulated around Beirut that the UN was foot-dragging on the follow-up to UNSCR 1644. Battered by these rumors, people had resigned themselves to thinking that Michel's visit would be a box-checking exercise meant to postpone any real discussion of an international tribunal. Yet if there is a lack of enthusiasm in UN headquarters for the UNSCR 1644 issues, Michel did not reveal it in his P-3 briefing. We've talked with some of the Lebanese whom Michel met, and their assessment was that Michel was intensely focused on coming up with the answers needed to decide how best to pursue UNSCR 1644's requests to UNSYG Annan. We, too, were impressed by the clarity of his analysis. Separately, UNSYG's Personal Representative for Lebanon Geir Pedersen told us that he did not detect any sense of unease or unhappiness on the part of Michel for his mission here. Given the ongoing cabinet crisis provoked by the question of an international tribunal, it is encouraging news for Lebanon's political majority that the UN Secretariat seems to be taking UNSCR 1644 seriously. We hope that Michel's apparent commitment to pursuing UNSCR 1644 follow-up will be matched by a Lebanese commitment to choose quickly the small team Michel wants to travel to New York. In the course of our discussions with Lebanese political leaders, we will certainly raise this issue.

FELTMAN